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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/695,748	10/24/2000	George W Keilman	66060-6	3238
22504 7590 01/08/2008 DAVIS WRIGHT TREMAINE, LLP/Seattle 1201 Third Avenue, Suite 2200 SEATTLE, WA 98101-3045				
EXAMINER				
NASSER, ROBERT L				
ART UNIT		PAPER NUMBER		
3735				
MAIL DATE		DELIVERY MODE		
01/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/695,748

Applicant(s)

KEILMAN ET AL.

Examiner

ROBERT L. NASSER

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 50, 51, 57-61, 63-68, 79-83, 87 and 93 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 57, 50, 51, 57-61, 63-68, 79-83, 87, 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/3508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The examiner sincerely regrets that when doing one last update search prior to issuance, reference 5500013 was found and is pertinent to a few of the pending claims. Accordingly, the following non-final office action is being entered.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 68 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how an iontophoretic transducer causes delivery vehicles to rupture, as recite in claim 68.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 47, 64, and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buscemi et al 5500513 in view of Spears 4799479 and Silvian 4681111. Buscemi shows a stent 10 having a medication on its interior surface contained in microcapsules. Buscemi teaches inserting a balloon on a catheter into the stent, expanding the balloon to expand the stent and heating the balloon with an ultrasonic or electromagnetic transducer to cause the microcapsules to rupture and the

locally delivery the drug. It is unclear whether the transducer within the stent. Spears teaches a method of heating a balloon with a light source, where there is a portion of the transducer in the balloon. Hence, it would have been obvious to modify Buscemi to use both a light source (claim 67) and locate the light source inside the balloon, as it is merely the substitution of one known location and type of heating source for another. The combination does not magnetically activate the transducer. Silvian teaches that magnetically activating a transducer is a known way to activate a transducer. Using the logic provide by the Supreme Court in the KSR decision, it would therefore have been obvious to try a magnetic signal to activate the transducer in Buscemi.

Claims 50 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buscemi in view of Spears and Silvian as applied to claims 47, 64, and 67 above, and further in view of Govari et al 6053873. Govari further teaches including a diagnostic transducer on a stent to provide a signal to the exterior of the patient indicating when the stent is becoming occluded. Hence, it would have been obvious to modify the combination above to use such a transducer, to increase patient safety.

Claims 51 and 66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 57-61, 63, 79-83, 87, and 93 are allowable.

Claims 51, 57-61, 63, 79-87, and 93 define over the art of record in that in that none of the art in that none of the art activates a transducer in an endoluminal implant in

response to the receipt externally of the body of a diagnostic signal obtained from a diagnostic transducer contained in the implant.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Shaknovich 5749890 has a stent which has delivery vessels that rupture to locally deliver a drug, but they are not ruptured in response to a therapeutic transducer.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT L. NASSER whose telephone number is (571)272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert L. Nasser Jr/
Primary Examiner
Art Unit 3735

RLN
January 5, 2007